

REMARKS

An information disclosure statement is enclosed, which provides a patent reference cited in the prosecution of the copending European application. The reference is commonly assigned to the assignee of the instant application and is not believed to be relevant to the allowability of the presently presented claims.

It should be noted that the amendments of the present claims have not been made to overcome any prior art, but rather to place the claims in a format suggested by the Examiner.

The Examiner objected to claims 11-15 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. After the present amendment, claims 11 to 15 include all the limitations of the parent claims from which they originally depended and are thus allowable.

Claims 7 and 10 have been amended so that they no longer mix product and method limitation in the same claim.

Turning to the anticipation and obviousness rejections of the Examiner, Eggers 5,603,426 and Skladnev 6,026,323 have been cited.

The patent by Eggers et al. employs several electrodes to enable two separate actions but not two separate methods of tissue diagnosis. The two actions are diagnosis and treatment. Eggers is not adapted so that more than one method of diagnosis can be implemented.

The Examiner on line 3 of page 3 states that "at least two unique electrical properties of known tissue types" is proposed by Eggers et al. In fact Eggers et al. in

column 3 line 67 refers instead to "at least - one electromagnetic property". The only property that receives mention by Eggers et al. is impedance (conductivity). Eggers does not claim any of the combinations that enable the present invention.

The Examiner also stated on line 6 page 3 that Eggers et al. "measure a pulse response of tissue (column 5, lines 24-30, 52-64)". The actual description by Eggers et al. is of a system that employs radio frequency currents to measure the electrical impedance, not pulses. The use of pulses is not mentioned.

The measurement of electrical impedance for the purposes of tissue diagnosis is well known. Alone, however, it has been repeatedly shown to be incapable of providing a useful diagnosis for clinical purposes. The present invention on the other hand employs the measurement of two or more disparate electrical properties to arrive at a diagnosis.


Skladnev et al. also employ multiple electrodes, but only to make tissue measurements by one technique, pulse and decay. The technique enables the inference of several properties but Skladnev et al. do not propose methods of electrical measurement other than pulse and decay.

Eggers et al. did not propose employing discriminant analysis in connection with their methodology. It is only in hindsight from the present invention that it may seem obvious to do so. They propose to arrive at a diagnostic decision based on the measurement of a single property, namely electrical impedance. Having arrived at that diagnostic decision they then apply a destructive level of current to the tissue to kill it. The present invention is thus quite unlike that of Eggers et al.

For the foregoing reasons it is believed that claims are now all allowable.

The Examiner is authorized to charge any additional amount necessitated by this reply, including any charges for extensions of time to allow consideration of this or any future reply requiring a petition for an extension of time, to deposit account 07-1730. This authorization should be treated as a constructive petition for such extensions of time, if any, as are necessary. In calculating such fees please note that the Assignee of this application is a large entity.

Respectfully submitted,



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Dated: May 28, 2003